204. But whether or not the legal title descends to the heir, there is no reason why the power of sale given the executors should not subsist for the benefit of the interests which do not fail, while convenience usually demands that it should. *Hatt* v. *Rich*, 59 N. J. Eq. 492.

WITNESSES — PRIVILEGED COMMUNICATIONS — ATTORNEY AND CLIENT: TESTATOR'S INSTRUCTIONS CONCERNING WILL. — A testator's first will was admitted to probate. His second will, not being found, was presumed to have been destroyed by him. The attorney's office copy of this second will was offered, to show that it revoked the first will. *Held*, that the testator's communications to his attorney are privileged, and the copy inadmissible. *Matter of Cunnion*, 135 N. Y. App. Div. 864.

To allow a man to obtain legal advice without fear of prejudicing his interests, the law protects confidential communications between attorney and client. *Greenough v. Gaskell*, 1 Myl. & K. 98; *Whiting* v. *Barney*, 30 N. Y. 330. In testamentary affairs, the death of the testator removes the reason for the protection and generally terminates the privilege. *Russell* v. *Jackson*, 9 Hare 387; *Doherty* v. *O'Callaghan*, 157 Mass. 90. See WIGMORE, EVIDENCE, § 2314. But the provision of the New York Code is very strict, making the privilege absolute unless expressly waived by the client at the trial. N. Y. CODE CIV. PROC. §§ 835, 836; *Loder* v. *Whelpley*, 111 N. Y. 239. Since a testator obviously cannot make such a waiver, this rule has led to injustice and has been judicially amended. Only communications intended, when made, to be confidential are privileged. *Matter of Smith*, 61 Hun (N. Y.) 101; *Matter of McCarthy*, 55 Hun (N. Y.) 7; *Whiting* v. *Barney*, *supra*. The privilege is waived when the attorney witnesses the will. *Matter of Coleman*, 111 N. Y. 220; *Matter of Sears*, 33 N. Y. Misc. 141. If the will is lost after the testator's death, public policy determines the privilege. *Sheridan* v. *Houghton*, 16 Hun (N. Y.) 628. The testator in the main case, by destroying the will, indicated that he desired the privilege to continue. If the purpose of the rule is to respect the client's wishes, and so insure freedom in his dealings with his attorney, the case must be supported.

BOOK REVIEWS.

A TREATISE ON THE LAW OF INSURANCE IN ALL ITS BRANCHES. By George Richards. Third Edition. Enlarged and Rewritten. New York: The Banks Law Publishing Company. 1909. pp. xxvii, 959.

The earlier editions of this book were prepared primarily for students. They contained about three hundred pages of treatise and about the same number of pages of reported cases, with an appendix of statutes and forms. The present edition contains a treatise of almost seven hundred pages, omits the cases, and devotes to statutes and forms an appendix of more than a hundred pages. The volume now appeals primarily to practitioners. Despite the absence of a table of cases, it is well adapted to be useful to its new audience, provided the reader has already had careful instruction in the subject discussed.

The author's own view is that of a practitioner. This is indicated here and there by comments which would be quite impossible for any lawyer to make who has not had much to do with insurance litigation. It is indicated also by careful descriptions of the mode in which the insurance business is carried on. The only shortcomings discovered in these descriptions are that the author does not explain the functions and powers of the various persons who are by the public indiscriminately termed insurance agents, and that he quite unintentionally gives the im-

pression that the members of the English Lloyd's write policies as a society. Yet these are trivial shortcomings, and the mention of them should not materially modify the recognition that the author gives in his opening chapter and elsewhere a useful insight into insurance as a business.

When the author explains not business but the law, it becomes clear that the practitioner's point of view, notwithstanding its advantages, may bring the disadvantage of minimizing, or perhaps not perceiving, important distinctions, with consequent danger to the reader. Several instances can be found in Chapter II. As to insurable interest, for example, the reader might gain from § 24 the wrong impression that the doctrine arises from the purpose of the parties to make a contract of indemnity — the real explanation, public policy, appearing at the close of the section in a very casual and subordinate way. Unfortunately, the point is of great consequence, for if the doctrine of insurable interest were simply based on the theory of indemnity, the result would merely be that a contract not supported by interest would be valid and that the measure of damages would be reduced to zero, whereas by reason of public policy the contract actually is void. The true doctrine is clearly seen in the inability of the parties to waive the requirement, and also in the extension of the requirement to life insurance policies, notwithstanding the theory that life insurance has nothing to do with indemnity. Again, in § 25 the definition of insurable interest would mislead the beginner by being too sweeping, for it does not indicate that the interest must be an estate or right or liability as to the thing which is the subject matter of the insurance; and the same is true of § 32. In § 40 a beginner would be aided by a clear statement that in the United States Supreme Court the doctrine that a payee must have an insurable interest is upheld by *dicta* only. In the same section it would have been useful to have given some discussion of the Pennsylvania and Texas views. The author's opinion — sound, and well expressed in §§ 44 and 45 — as to the time when insurable interest must exist in marine and fire insurance might well have been repeated in § 46 as to life insurance. In § 49 it might have been well to mention the marine doctrine forbidding recovery for a loss caused by a negligent failure to repair unseaworthiness arising after the attaching of the policy. In § 54 the author's opinion of the leading subrogation case of *Castellain* v. *Preston* is not explained convincingly, if one recalls the doctrine that a policy of insurance is merely a contract of indemnity. In § 59 it might have been an improvement to indicate in the text that a mortgagee cannot recover more than the damage to the property and that there is a diversity of opinion as to the amount recoverable by a life tenant, together with the reason for the diversity. In § 63 the author fails to distinguish the various kinds of so-called assignment of fire policies, and also fails to explain that the peculiar right in a marine policy of substituting a new insurer proceeds upon the supposed original assent of the underwriter. In § 64 and the following sections the reader would have been aided by a more careful discrimination of the various senses in which it can be contended that a life policy gives to a beneficiary a vested right. In § 73, where is stated the view of some jurisdictions that a creditor should retain under a life policy no more than the amount of his debt, it is not pointed out that the theory is one of collateral security; and the cases cited in the footnote do not support the text, if, as the footnote carefully states, they are cases in which the policy was assigned.

After making these necessary comments upon the sixty-six pages of Chapter II, it is pleasant to be able to add that, taken as a whole, the chapter is useful and that some parts of it, especially §§ 44, 45, 60, 61, and 65–67, distinctly show independent and careful thought.

Grounds for criticism are much less frequent when the reader passes from the first ten chapters, which deal with general principles, to the last eleven chapters, which deal with the meaning and legal effect of the clauses commonly used, for the author is apparently on very familiar ground when he writes of the New York standard fire insurance policy and similar matters.

A TREATISE ON THE FEDERAL CORPORATION TAX LAW OF 1909. By Arthur W. Machen, Jr., Boston. Little, Brown and Company. 1910. pp. xxv, 269.

This volume has undoubtedly proved serviceable to many of the profession in the preparation of corporation tax reports. Its explanations of the different provisions of the Corporation Tax Law are so clear as fully to warrant the author's belief, as expressed in the preface, "that the book is more than a mere 'annotated edition' of the Act of Congress." In addition the book is well indexed, and conveniently arranged appendices contain the text of the law, together with the Treas ury Regulations and Forms of Return. The author states the grounds on which the validity of the law will probably be assailed, but refrains from stating a definite opinion as to whether such attacks will be successful. A. C. B.

SHIPPERS AND CARRIERS OF INTERSTATE FREIGHT. By Edgar Watkins. Chicago: T. H. Flood and Company. 1909. pp. 549.

The author does not profess to cover the general subject of interstate commerce but, to use his language, "The purpose of this work is to treat of the rights and duties of shippers and carriers of freight that comes within the description of interstate commerce." These rights and duties are considered chiefly as arising out of or affected by the Interstate Commerce Act and the amendments thereto including the Elkins law and Hepburn law of 1906. The opening chapter deals with the validity and scope of the Act and is followed by chapters on the reasonableness of rates and the equality in rates. Then come chapters upon the enforcement of the Act by the Interstate Commerce Commission, including rules of procedure and forms, the enforcement by the courts and the power of the courts to prevent an illegal advance in rates. In the next chapter the Act is printed with amendments, section by section, and under each section the decisions of the commission and the courts are collected, the point of each case being succinctly stated in the text. The other chapters deal with state laws and other laws of Congress affecting interstate commerce. In the appendices are printed the Safety Appliance Acts, the Employers' Liability Act, the Arbitration Act, and the Corporation Tax Act. It is hard to see that the last named comes within the scope of the book.

Though the author has limited his purpose as above indicated, the field chosen has already been covered by more comprehensive works on the subject, such as The Law of Interstate Commerce by Judson, and Railroad Rate Regulation by Beale and Wyman. But the law of interstate commerce is constantly growing, and a book including the recent cases as this one does is useful. The chief criticism is that the author has too often on a given point taken refuge in long quotations from cases and has repeated. For instance, a long quotation in section 94 is the same as that quoted in section 61, and there are other instances. In spite of these defects, the author has produced a practical treatise on the subject. Beside covering the legal side of the questions, he has included quotations from technical works on railroads which should prove helpful alike to lawyers and traffic men. There is a well-arranged index and a table of cases. R. T. H.

A TREATISE ON THE LAW OF INDEPENDENT CONTRACTORS AND EMPLOYERS' LIABILITY. By Theophilus J. Moll. Cincinnati: The W. H. Anderson Company. 1910. pp. lvi, 378.

This is a book designed to deal primarily with two questions: Who are independent contractors? and What is the liability for their acts of the person who employs them? It does not exhibit the results of much original thought or throw